

WETLANDS COUNCIL

MINUTES

December 13, 2016

The Wetlands Council met on Tuesday, December 13, 2016 in Rooms 112, 113, 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Sheridan Brown, Ryan Crosbie, Carol Henderson, James Kennedy, Deborah Lievens, Richard Mellor, Seth Prescott, Russ St. Pierre, Susan Slack, Robert Snelling and Bob Wolff

Absentees: Councilors:

Also present was: Carolyn Guerdet, Council Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 9:01 a.m. with introductions and a quorum present.

1. Approval of Minutes

- *Councilor Snelling made a motion to approve the November 15, 2016 meeting minutes with one correction, second by Councilor Lievens. Motion passed unanimously with Councilor Wolfe abstaining.*

Snow days were discussed. If the Concord schools are delayed or called off there will be no Wetlands Council.

Council adjourned the meeting and went into Executive session at 9:06 a.m.

- *At 9:45 a.m. Councilor Crosbie made a motion to reconvene the Council meeting, second by Councilor St. Pierre. Motion passed unanimously.*

2. Public Input: None

3. Status of Appeals

Peter Demas, DES Legal Unit

I. New Appeals

Docket No. 16-13 WtC – Intervale Country Club Appeal

Subject: 7/7/16 denial of Wetlands permit, file #2016-00304

Hearing Officer: Not assigned

Status: August 3, 2016 received Petition for Appeal. October 17, 2016 issued Insufficient Appeal letter.

Sufficient appeal was not filed within the 30 days of insufficient letter. Docket now closed.

Docket No. 16-14 WtC – Mark S. Panall Appeal

Subject: 8/9/16 Letter issued to Charles MacGlashing, Jr. regarding LRM File #2974

Hearing Officer: Not assigned

Status: September 1, 2016 received Petition for Appeal. November 21, 2016 issued Receipt of Appeal letter.

Please note the Council may have to determine whether the Appeal is within the Council's jurisdiction at their December 13, 2016 meeting. It also appears that the Appeal is insufficient. If the Council determines that the Appeal is within its jurisdiction, it may be necessary for the Appeals Clerk to send a notice of insufficient Appeal, as required under Env-WtC 203.03, and any insufficiencies corrected by the petitioner, before the Council decides whether to accept or deny the Appeal.

- ***Councilor Slack made a motion to deny acceptance of the Appeal, second by Councilor Wolff. Motion passed unanimously.***

Docket No.16-15 WtC – Kloppenburg-McCaffery Trust Appeal

Subject: 8/8/16 decision declining to act regarding complaint file #2016-01740

Hearing Officer: Not assigned.

Status: September 7, 2016 received Notice of Appeal. November 14, 2016 issued receipt of Appeal letter.

Please note the Council may have to determine whether the Appeal is within the Council's jurisdiction at their December 13, 2016 meeting. It also appears that the Appeal is insufficient. If the Council determines that the Appeal is within its jurisdiction, it may be necessary for the Appeals Clerk to send a notice of insufficient Appeal, as required under Env-WtC 203.03, and any insufficiencies corrected by the petitioner, before the Council decides whether to accept or deny the Appeal.

- ***Councilor Henderson made a motion to deny acceptance of the Appeal, second by Councilor Snelling. Motion passed unanimously.***

Docket No. 16-17 WtC – Robert C. Brown Appeal

Subject: 8/19/16 permit #2009-01521

Hearing Officer: Not assigned

Status: September 19, 2016 received Petition for Appeal and Motion to Extend Time. November 21, 2016 issued receipt of Appeal letter. Please note the Council may have to determine whether the Appeal is within the Council's jurisdiction at their December 13, 2016 meeting. It also appears that the Appeal is insufficient. If the Council determines that the Appeal is within its jurisdiction, it may be necessary for the Appeals Clerk to send a notice of insufficient Appeal, as required under Env-WtC 203.03, and any insufficiencies corrected by the petitioner, before the Council decides whether to accept or deny the Appeal.

- ***Councilor Slack made a motion to deny acceptance of the Appeal and the Motion, second by Councilor Lievens. Discussion was held. Motion passed unanimously.***

Docket No. 16-20 WtC – Matthew and Katherine Lowrie, et al. Appeal

Subject: 9/12/16 approval of Wetlands Restoration Plan for McCarthy Subdivision, LRM file #2015-02245 (EMD3009)

Hearing Officer: Not assigned

Status: October 12, 2016 received Petition for Appeal and Appearance for Sherilyn Young. November 1, 2016 received Motion to Summarily Dismiss Petition. 11/14/16 issued receipt of Appeal letter. 11/14/16 received Objection to Motion to Summarily Dismiss. 11/17/16 received Appearance of Richard head. 11/23/16 received McCarthys' Reply to Appellants' Objection to Motion to Motion for Summary Dismissal. Please note the Council may have to determine whether the Appeal is within the Council's jurisdiction at their December 13, 2016 meeting. It also appears that the Appeal is insufficient. If the Council determines that the Appeal is within its jurisdiction, it may be necessary for the Appeals Clerk to send a notice of insufficient Appeal, as required under Env-WtC 203.03, and any insufficiencies corrected by the petitioner, before the Council decides whether to accept or deny the Appeal.

- ***Councilor Snelling made a motion to table this to the January meeting pending written response from Counsel to Council, second by Councilor Slack. Discussion was held. Motion passed unanimously.***

II. Decisions that need to be written/finalized and issued.

Docket No. 14-16 WtC – David and Louise Drolet, et al. Appeal

Subject: 11/10/14 permit approval #2014-00246 issued to Green and Company

Hearing Officer: David Conley, Esq. appointed by AG on 3/13/15

Status: October 19, 2015 received Motion to Continue. 10/21/15 received Objection to Appellant's Motion to Continue Hearing. 10/26/15 issued letter granting Motion to Continue and rescheduling hearing for February 9, 2016 at 9 a.m. November 24, 2015 received Appellant's Witness and Exhibit List. Hearing was held February 9, 2016 and deliberations were held on 2/16/16. Hearing Officer to issue decision within 90 days (5/16/16). Councilor Henderson noted that on top of page 3 of the Decision it should be 'disturbance' of an area not

'wetlands'. Decision was adopted at the June 14, 2016. 6/14/16 issued Decision and Order denying Petition for Appeal. July 13, 2016 received Appellant's Motion for Reconsideration. 7/19/16 received Partially Assented-to Motion to Extend Time to file Objection. 7/25/16 issued letter granting Partially Assented-to Motion to Extend Time to File Objection. 7/22/16 received Permittee's Objection to Motion for Reconsideration. Decisions were by chairman and hearing officer. September 19, 2016 council issued Ruling on Motion to Reconsider. November 7, 2016 issued Decision denying Motion for Reconsideration. November 16, 2016 issued 9/19/16 Ruling on Motion to Reconsider as it may not have been set to all parties at the time of issuance. December 6, 2016 issued letter withdrawing the Hearing Officer's Order on Motion for Reconsideration dated 11/7/16.

Docket No. 15-12 WtC – N. Miles Cook III Appeal

Subject: 10/9/15 denial of permit application #2015-00960

Hearing Officer: David Conley, Esq. appointed by AG on 2/22/16

Status: November 5, 2015 received Petition for Appeal. 11/9/15 issued receipt of Appeal letter. 11/20/15 received Appearance from Atty. Maloney for DES. Council to accept or dismiss at their February 9, 2016 meeting. Appeal was accepted at the February 9, 2016 Council meeting. 2/23/16 issued Appeal accepted letter. 2/25/16 issued notice of Pre-hearing Conference schedule for 3/28/16 at 9:30 a.m. 3/28/16 issued Pre-hearing Order scheduling hearing for June 14, 2016 at 9 a.m. May 13, 2016 received State's Witness and Exhibit List. 5/13/16 received Appellant's Witness and Exhibit List. June 2, 2016 received motion to Continue Hearing. 6/8/16 issued letter granting Motion to Continue Hearing, rescheduling it for August 9, 2016 at 9 a.m. Hearing held August 9, 2016. Deliberations were held August 30, 2016. Appeal was denied on a 5-5 vote. December 2, 2016 issued draft Decision and Order to the Council for comments. Need to issue Decision and Order denying appeal.

- ***Councilor Henderson made a motion to accept the Decision as modified, second by Councilor Brown. Motion passed unanimously.***

Docket No. 16-09 WtC Brox Environmental Citizens Appeal

Subject: 4/26/16 Decision of Complaint #3066 regarding dredge and fill at Brox Town Land.

Hearing Officer: Not assigned.

Status: Appeal filed on May 25, 2016. 5/26/16 issued receipt of Appeal. Town of Milford filed Motion to Intervene on June 30, 2016. Appeal dismissed at the August 9, 2016 meeting. 8/10/16 council issued ruling on Appeal. November 16, 2016 issued August 10, 2016 Ruling on Acceptance of Appeal and Motion to Intervene and Standing, as it may not have been sent to all parties at the time of issuance.

III. Hearings or PHCs Pending

Docket No. 16-12 WtC – William M Ranney Appeal

Subject: 6/23/16 Approval of Shoreland Permit #2016-01071

Hearing Officer: 11/7/16 Requested Hearing Officer be assigned.

Status: July 5, 2016 received Request for Appeal. 7/14/16 issued Insufficient Appeal letter. 7/19/16 received Revised Appeal. 7/20/16 issued Receipt of Appeal letter. Council accepted the appeal September 13, 2016. 9/23/16 received Motion to Intervene from Permittee. November 7, 2016 issued Appeal accepted letter. A Motion to Intervene has been filed. A prehearing conference to be set up with the Hearing Officer. November 7, 2016 issued appeal accepted letter. December 2, 2016 hearing Officer granted Motion to Intervene. 12/12/16 issued Notice of Pre-hearing Conference scheduled for January 23, 2016 at 9:30 a.m.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No. 14-12 WtC – Susan and Mark Hilbert Appeal

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 28, 2014 received Notice of Appeal. 7/30/14 issued insufficient appeal letter. August 8, 2014 received revised Notice of Appeal. 8/11/14 issued receipt of Revised Notice of Appeal. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/27/14 issued Prehearing Order staying the appeal pending the outcome of the Superior Court Quiet Title action. June 16, 2016 issued request for a status report of the pending appeal. 6/24/16 received appeal status update; still pursuing appeal.

Docket No. 14-13 WtC – Ergendino Perrone and Robert Gleason Appeal

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued receipt of appeal letter. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/21/14 received Assented-To Motion to Stay Proceedings. 10/22/14 issued letter granting Motion to Stay Proceedings. July 1, 2015 received appellant's Withdrawal of Counsel Philip Braley. 7/6/15 received appellant's withdrawal of counsel Cooley Arroyo. June 16, 2016 issued request for a status report of the pending appeal. 6/24/15 received appeal status update from Ergendino Perrone. July 8, 2016 received appeal status update from Robert Gleason.

Docket No. 14-14 WtC – Jeffrey Norton et al. Appeal

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued insufficient appeal letter. August 6, 2014 received revised Notice of Appeal. 8/7/14 issued receipt of Revised Notice of Appeal. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/22/14 received Assented-To Motion to Stay. 10/23/14 issued letter granting Motion to Stay. June 16, 2016 issued request for a status report of the pending appeal. 6/28/16 received appeal status update.

V. Misc.

4. New Business

Councilor Crosbie announced this is his last meeting as his job has changed and he will be resigning from the Council. There will be a new representative nominated from the construction industry.

Chairman Kimball has spoken with the Marine Industry but they have no nomination as of yet.

5. Old Business

6. Next Meetings –

January 10, 2017 at 9:00 a.m. with election of officers.

7. Adjournment

- ***Councilor Slack made a motion to adjourn, second by Councilor Snelling. Motion passed unanimously.***

Meeting adjourned at 10:22 a.m.